IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

MONDAY, THE TWENTY NINTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE B. PRAKASH RAO

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REVIEW W.P.M.P NO : 28093 of 2004

IN

W.P.NO: 25980 of 2000

-

REVIEW W.P.M.P NO : 28093 of 2004

Between:

1. The Government of A.P., rep. by its Secretary,

   Prohibition & Excise Department, Secretariat,

   Hyderabad.

2. The Commissioner of Prohibition & Excise, Nampally, Hyderabad.

3. The Prohibition & Excise Superintendent,
   Khammam District at Khammam.

..... REVIEW PETITIONERS

(Respondents inW.P.NO : 25980 of2000
on the file of High Court)

AND

M/s. Sai Laxmi Wines,

Rep. by its Proprietor, Anati Madhu,

S/o. Venkateswarlu, R/o.Subhashnagar,

Yellandu Village, Khammam District.

.....RESPONDENT

(Petitioner in -do-)

Counsel for the Review Petitioners: GP FOR PROHIBITION&EXCISE

Counsel for the Respondent-Petitioner: MR.P.PRABHAKAR RAO

Petition under Section 151 of CPC praying the High Court to review the orders dt 4-8-2004 in the writ petition W.P.NO.25980 of 2000 on the file of the High Court.

WRIT PETITION NO : 25980 of 2000

Between:

M/s. Sai Laxmi Wines,

Rep. by its Proprietor, Anati Madhu,

S/o. Venkateswarlu, R/o.Subhashnagar,

Yellandu Village, Khammam District.

..... PETITIONER

AND

1. The Government of A.P., rep. by its Secretary,

   Prohibition & Excise Department, Secretariat,

   Hyderabad.

2. The Commissioner of Prohibition & Excise, Nampally, Hyderabad.

3. The Prohibition & Excise Superintendent,
   Khammam District at Khammam.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction particularly one in the nature of Writ of Mandamus, declaring Clause-a of the schedule appended to Rule 25(9) of the A.P. Indian Liquor and Foreign Liquor Rules as arbitrary and unconstitutional as also the action of the respondents in not refunding the proportionate licence fee from 1.4.2000 to 12.5.2000 to the petitioner is arbitrary, illegal and unconstitutional and consequently to direct the respondents to refund the proportionate licence fee for the said period.

(prayer amended as per Court order dated 04.07.2001 in W.P.M.P.No.4708 of 2001)

Counsel for the Petitioner: MR.P.PRABHAKAR RAO
Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

The Court made the following ORDER:

THE HON'BLE MR JUSTICE B.PRAKASH RAO

Rev.W.P.M.P.No.28093 of 2004

and

WRIT PETITION NO : 25980 of 2000

ORDER:

Heard the learned Government Pleader for Prohibition and Excise, appearing on behalf of the Review petitioners/respondents and also the learned counsel appearing on behalf of the respondent/petitioner.

This application is filed seeking review of the orders dated 04.08.2004 passed in Writ Petition No.25980 of 2000, whereunder, this Court, directed the Review Petitioners to the amount to the respondent following the decision reported in **The Government of A.P., rep. by its Secretary, Revemie (Excise) v. A.Sudhakar**in Writ Appeal No.282 of 2001 dated 07.03.2001.

It is submitted by the learned Government Pleader for Prohibition & Excise that the said decision is subsequently reversed by a Full Bench of this Court in **Sri Narsimha Wines & others V. Prohibition & Excise Superintendent, Medak at Sangareddy**.

Having heard the learned counsel on either side and also on perusal of the material available on record and in view of the decision of the Full Bench of this Court that the powers of this Court under Article 226 of Constitution of India cannot be invoked seeking for refund, the order passed in W.P.No.25980 of 2000 is liable to be recalled and the writ petition is liable to be dismissed.

Accordingly, the review application is allowed and the writ petition consequently stands dismissed.

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B. Prakash Rao, J

Date: 29.11.2004

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To

1. The Secretary, the Government of A.P.,

   Prohibition & Excise Department, Secretariat,

   Hyderabad.

2. The Commissioner of Prohibition & Excise, Nampally, Hyderabad.

3. The Prohibition & Excise Superintendent,
   Khammam District at Khammam.

4. Two CCs to G.P for Prohibition and Excise, High Court of A.P. Buildings,
   Hyderabad (OUT)

5. Two CD copies